

Message Text

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TAGS: XV, TGEN, NO, PLOS

SUBJECT:ANTARCTIC CONSULTATIVE MEETING: MINERAL RESOURCES

REFS: OSLO 2474; OSLO 2475

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1. SUMMARY - DEL AUTHORIZED TO SUPPORT ESTABLISHMENT OF
GROUP OF LEGAL EXPERTS TO CARRY ON DISCUSSIONS OF LEGAL
ASPECTS OF MINERAL RESOURCES ISSUES WITHIN NARROWLY DRAWN
TERMS OF REFERENCE THAT DO NOT IMPLY POLITICAL ISSUES OR

PRECISE RESOURCE REGIME WILL BE DISCUSSED. END SUMMARY.

2. DEPARTMENT HAS REVIEWED SITUATION DESCRIBED REFTELS IN LIGHT OF EXISTING AUTHORITY AND ALTERNATIVE SCENARIOS FOR INITIATION OF SERIOUS NEGOTIATIONS ON RESOURCES ISSUES. DEPARTMENT BELIEVES THAT IF ACCEPTABLE ACCOMMODATION CAN BE REACHED ON TERMS OF REFERENCE, A LOW-KEY GROUP OF LEGAL EXPERTS (AND NOT LEGAL/POLITICAL GROUP AS SUGGESTED REFTELS) WOULD BE ACCEPTABLE.

3. PROBLEM POSED BY NEGOTIATION OF ACCEPTABLE TERMS OF REFERENCE APPRECIATED. UNDER EXISTING AUTHORITY, DEL MAY NOT REPEAT NOT AGREE TO ANY FORMULATION ON MORATORIUM/ RESTRAINT QUESTION WHICH WOULD SUGGEST ANY OBLIGATION FOR U.S. TO REFRAIN FROM OR HINDER RESOURCES ACTIVITY. WE

CANNOT COMPROMISE PRESIDENT'S FLEXIBILITY TO REVIEW INTERIM POLICY OF VOLUNTARY RESTRAINT CONSISTENT WITH FOLLOWING GUIDANCE:

- "WE SHOULD CONTINUE OUR PRESENT INTERIM POLICY OF URGING NATIONS TO REFRAIN FROM COMMERCIAL EXPLORATION AND EXPLOITATION, PENDING AN INTERNATIONALLY AGREED APPROACH. OUR INTERIM POLICY WOULD BE REEXAMINED IF OTHER PARTIES TO THE ANTARCTIC TREATY WERE TO UNDERTAKE PRECIPITATE ACTION OR IF THE PROSPECTS FOR ARRIVING AT AN INTERNATIONALLY AGREED APPROACH WERE DETERMINED TO BE REMOTE."

- REFTELS DO NOT INDICATE ALTERNATIVE TEXTS, IF ANY, PUT FORWARD BY AUSTRALIANS OR OTHERS ON THIS QUESTION. HOWEVER, WE BELIEVE THAT PREAMBULAR LANGUAGE SHORT OF EXPLICIT STATEMENT OF OPEN-ENDED RESTRAINT POLICY MAY BE RESPONSIVE TO AUSTRALIAN AND LATIN CONCERNS AND WITHIN EXISTING AUTHORITY. TERMS OF REFERENCE COULD INCLUDE PREAMBULAR LANGUAGE REFERRING TO INTERIM POLICY
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OF RESTRAINT ALONG FOLLOWING LINES QUOTE TAKING INTO ACCOUNT THE PROGRESS BEING MADE IN THESE DISCUSSIONS, THE ACTIONS OF OTHER STATES IN THE AREA, AND THE DESIRABILITY OF AVOIDING PREJUDICING SUCH PROGRESS...END QUOTE. PRECISE TEXT WORKED OUT BY USDEL WITH OTHERS SHOULD BE IMMEDIATELY SUBMITTED TO DEPARTMENT BY COB OSLO JUNE 19 BEFORE DEL COMMITS ITSELF EITHER FORMALLY OR INFORMALLY TO SUPPORT TEXT, ACCOMPANIED BY KNOWN POSITIONS OF ALL OTHER DELEGATIONS.

4. DEL SHOULD BEAR IN MIND NEED TO ASSURE THAT ANY SUBSEQUENT PROCEDURAL STEPS, INCLUDING THE CONVENING OF CONSULTATIVE MEETING DIRECTED TO CONSIDERATION OF RESOURCES ISSUE, COULD INCREASE THE VISIBILITY OF THE ANTARCTIC

RESOURCES QUESTIONS. THIS LIKELY TO HAVE DANGEROUS EFFECT OF INCREASING ATTENTION IN LOS OR UNGA TO ANTARCTIC RESOURCES. DELEGATION SHOULD THEREFORE MAKE EVERY EFFORT TO ASSURE THAT SUBSEQUENT PROCEDURAL STEPS HAVE LOW VISIBILITY, AND DO NOT REPEAT NOT TEND TO STIMULATE ARGUMENTS FOR UNGA INVOLVEMENT, WHICH WE BELIEVE A "POLITICAL" GROUP WOULD DO.

5. WE THEREFORE BELIEVE THAT THE OPTIMUM RESULT PROCEDURALLY WOULD BE ESTABLISHMENT OF A LOW KEY LEGAL (AND NOT LEGAL/POLITICAL) EXPERTS GROUP WITHOUT COMMITMENTS ON RESOURCES POLICY QUESTIONS IN TERMS OF REFERENCE. ITS BASIC FUNCTION WOULD BE TO STUDY LEGAL SITUATION IN ANTARCTICA IN LIGHT OF ANTARCTIC TREATY AS IT BEARS ON RESOURCE QUESTION.

6. AS NOTED PARAGRAPH 3, WE RECOGNIZE POSSIBLE DIFFICULTIES WITH THIS OBJECTIVE IN LIGHT OF CONDITIONS DESCRIBED REFTELS. STRONG U.S. OPPOSITION TO SOME REFERENCE TO RESTRAINT/MORATORIUM ISSUE IN TERMS OF REFERENCE COULD BE MISCONSTRUED BY OTHERS.

7. DEL THEREFORE AUTHORIZED TO AGREE TO ESTABLISHMENT OF LEGAL EXPERTS GROUP TO CONSIDER LEGAL AND JURIDICAL ISSUES ONLY RELATING TO ANY EVENTUAL EXPLORATION AND EXPLOITATION OF ANTARCTIC MINERAL RESOURCES. AGREED TERMS OF REFERENCE MAY CONTAIN LANGUAGE ALONG LINES THAT CONTAINED PARA. 3 BUT MAY NOT, REPEAT NOT, IMPLY ANY CONFIDENTIAL

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COMMITMENT THAT U.S. WILL CONTINUE POLICY OF RESTRAINT IF OTHER PARTIES TO TREATY WERE TO UNDERTAKE PRECIPITATE ACTION OR IF THE PROSPECTS FOR ARRIVING AT AN INTERNATIONALLY AGREED APPROACH WERE DETERMINED TO BE REMOTE. AS NOTED ABOVE, WE SHOULD NOT PREJUDICE PRESIDENTIAL REVIEW OF POLICY SHOULD CONDITIONS WARRANT.

8. IF AGREEMENT ON TERMS OF REFERENCE NOT POSSIBLE, DEL MAY AGREE TO CONTINUATION OF DISCUSSIONS IN PREPCOM SCHEDULED DURING 1976, WITHOUT REFERENCE TO RESTRAINT ISSUE, NOTING THAT U.S. EXPECTS TO CONTINUE STUDIES OF ISSUES AND CONSULTATIONS WITH OTHERS IN INTERIM. DEL SHOULD NOT AGREE TO CONSULTATIVE MEETING DURING 1976, SINCE CONVENING OF FORMAL CONSULTATIVE MEETING WOULD RAISE VISIBILITY OF RESOURCE ISSUE.

9. IN CONTEXT OF BILATERAL STUDY AND DISCUSSIONS IN INTERIM BETWEEN 8TH AND 9TH CONSULTATIVE MTGS, U.S. WOULD BE PREPARED TO SHARE APPROPRIATE TECHNICAL ELEMENTS OF ITS OWN ANALYSIS OF CONDITIONS AND ISSUES WITH OTHER CONSULTATIVE NATIONS.

10. REF OSLO 2475: REQUEST CLARIFICATION OF STATEMENT

IN PARA 2, FOURTH PT, THAT ANY STUDY SHOULD "EXPLICITLY
ASSUME MINERAL RESOURCES ACTIVITIES COULD OCCUR WITH
SAFETY IN THE ANTARCTIC ENVIRONMENT". DOES THIS MEAN THAT
AS A MATTER OF POLICY, ASSUMPTION WOULD BE THAT THERE
MUST BE GUARANTEE OF NO HARM TO ENVIRONMENT BEFORE EXPLORA-
TION AS WELL AS EXPLOITATION? DOES IT APPLY TO PRIOR
DEVELOPMENT OF CRITERIA TO ASSURE ENVIRONMENTAL PROTECTION
BEFORE QUESTION OF POSSIBLE LEGAL CONDITIONS FOR RESOURCE
ACTIVITY CAN BE EXPLORED? INGERSOLL

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<< END OF DOCUMENT >>

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